

January 17, 2018

**BY EMAIL**

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Re: *DDR Holdings, LLC v. Priceline.com LLC, et al.*, Case No. 1:17-cv-00498-ER  
[Consolidated]

Counsel:

I write regarding Interrogatory No. 1 and the definition of “Accused Instrumentality” therein. As noted separately in our January 17, 2018 letter, DDR has not identified the “Accused Instrumentality” with specificity. I will not repeat my statements made therein here, however, the same concerns regarding the scope of the “Accused Instrumentality” also affect our ability to respond to Interrogatory No. 1. (*See* J. Reed January 17, 2018 Ltr regarding Infringement Contentions). These same issues were also raised with DDR during our meet and confer on Monday January 8, 2018.

**I. Interrogatory No. 1**

As an initial matter, Interrogatory No. 1 requests, in part, the identity of “each Entity that has received revenue resulting from that Entity’s participation in an Accused Instrumentality....” The term “Accused Instrumentality” is defined within DDR’s First Set of Interrogatories as “any instrumentality owned, operated, or controlled by defendant and identified in DDR’s Complaint against You or in ‘DDR Holdings, LLC’s Disclosures’ served upon You....” Similarly, DDR’s Initial Disclosures refer back to DDR’s complaint in defining the Accused Instrumentality (“DDR believes that defendant refers to the accused product (including method and system) described in the complaint as its ‘ecommerce platform’”). DDR’s Claim Chart includes the same vague reference to “Shopify’s Ecommerce Platform.”

DDR’s Amended Complaint makes the same vague allusions to Shopify’s ecommerce platform. The “characteristics of Shopify’s platform that cause infringement” are as follows:

Shopify directly and literally infringes the above-described claims through its **ecommerce platform**. The specific characteristics of Shopify’s platform that cause infringement of the asserted patents are as follows: ... When Internet visitors activate a link, using a computer (e.g., desktop or laptop) or portable computing device

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(phone, tablet, etc.) on a source web page **controlled** by a “host,” i.e., a Shopify customer, the Internet visitor’s computer is redirected to a URL at which Shopify’s server system is accessible....

DDR’s First Amended Complaint, ¶ 16. As you are aware, Shopify offers multiple services and/or products. *See, e.g.,* <https://www.shopify.com/>. The term “ecommerce platform” can refer to each and every Shopify services and/or products, including the following: Online Store, Shopify POS, Retail Package, Buy Button, Pinterest Buyable Pins, Facebook Shop, Facebook Messenger, Amazon, and Enterprise. *Id.*

To the extent Interrogatory No. 1 seeks information for any Entity which has derived revenue from all products and/or services under Shopify’s ecommerce platform, that request is overbroad and not proportional to the needs of the case. To the extent Interrogatory No. 1 seeks revenue relating “e-commerce pages hosted by Shopify” linked to a “respective customer website is hosted by a web-hosting company (i.e., not Shopify),” please identify the specific product and/or service you are accusing of infringing the patents in suit. As noted above, a catalog of Shopify’s products and services are publicly available at its homepage.

Further, the term “controlled by” is ambiguous in Interrogatory No. 1 and this was raised on the Monday January 8, 2018 meet and confer. As noted above in the excerpt of your Amended Complaint, you state that the source web page is “controlled” by a Shopify customer. In your clarifying examples sent on January 9, 2018, you identified that the client web sites were hosted by non-Shopify and non-Shopify customer entities (the IP addresses for the hosts are registered to CariNet, Inc. and CloudFlare, Inc.). Please clarify the definition of “controlled” as used in Interrogatory No. 1 with respect to web pages (*i.e.*, whether control means legal ownership, supervisory rights, etc...).

In summary, please identify the “Accused Instrumentality” with specificity, and please provide the meaning of the term “controlled” as used in Interrogatory No. 1 by Monday, January 22, 2018. If you are unable or unwilling to meet this request, we request a meet and confer on Thursday, January 18, 2018 at 4 PM EST.

Sincerely,

/s/ Jinnie L Reed

Jinnie L. Reed

*Counsel for Defendant Shopify, Inc.*